

**Title 9--DEPARTMENT OF
MENTAL HEALTH
Division 45--Division of *[Mental
Retardation and]* Developmental
Disabilities
Chapter 3—*[Care and Habilitation]* Services and Supports**

Note to reviewers: The changes proposed in the original draft amendment dated 7/28/2015 are showed in the format required by the Secretary of State for rule making. Text to be deleted is showed in brackets and italics: *[deleted text]* New text is shown in **bold**.

Revisions recommended by reviewers are shown in this updated draft using track changes so that reviewers may compare the original proposed amendment to the updated version. Track changes will show text to be deleted in strike-through, red font (~~deleted text~~) and text to be added in **bold and underlined** red font.

9 CSR 45-3.040 Rights of *[Protectors,]* Designated Representatives, Parents, and Guardians

Purpose: This amendment changes the name of the division to comply with House Bill 555 and House Bill 648 passed by the 95th Missouri General Assembly which removed the term “mental retardation” from Missouri statutes and updates the rule with current terminology in the field of developmental disabilities. This amendment broadens the rule to apply to all people eligible for division services.

*PURPOSE: This rule prescribes policies for designation of *[protectors]* **representatives** and recognition of certain rights of *[protectors]* **designated representatives**, parents and guardians of *[clients]* **individuals** **receiving services from** ~~of~~ the Division of *[Mental Retardation and]* Developmental Disabilities.*

(1) Definitions

(A) *[The term protector]* Designated representative – *[means]* a parent, relative or other person designated by an adult *[client that]* **who** does not have a guardian. The *[protector shall be recognized by the division to assist the client in planning and participating in habilitation]* **designated representative may participate in the person-centered planning process and development of the individual support, at the request of and as directed by the individual.**

(B) Person centered planning process--a process directed by the individual, with assistance as needed from a guardian, public administrator, the responsible party and/or other person as freely chosen by the individual. The process may include other individuals freely chosen by the participant who are able to serve as important contributors to the process. The person-centered planning process enables and assists the individual to access a personalized mix of paid and non-paid services and supports that will assist him/her to achieve personally defined outcomes and the training, supports, therapies, treatments and/or other services become part of the individualized support plan.

(C) Individual Support Plan (ISP) -- A document directed by the individual, with assistance as needed from a designated representative, in collaboration with an individual support team. ~~The ISP identifies strengths, capacities, preferences, needs and desired~~

~~outcomes of the individual. The ISP shall encompass personalized mix of paid and non-paid services and supports that will assist him/her to achieve personally defined outcomes. Training, supports, therapies, treatments and/or other services to be provided for the individual become part of the ISP.~~

(2) The division shall recognize and encourage parents **and legal guardians** who are willing and able to exercise their rights to *[be involved in clients' comprehensive evaluations, care, habilitation, placement or supports]* **participate in person-centered planning, development and implementation of the ISP**, or referral as set out in this rule.

(3) As set out in section 633.110, RSMo, parents of minor *[clients]* **children and youth** and legal guardians have the right to approve or refuse *[care, habilitation, referral]* **supports** or placement of their children or wards.

(4) Adults *[clients]* who have not been declared legally incapacitated may give their written consent for parents, relatives or other persons to serve as their *[protectors]* **designated representative** to advocate for and advise, guide and encourage the *[clients]* **individual** and members of the *[interdisciplinary]* **individual support plan** team in developing and *[providing habilitation]* **implementing individual support** plans. Written consent for designated representatives shall include written consent to disclose private health information.

(A) In accordance with the federal Health Insurance Portability and Accountability Act of 1996 and departmental policy, the consent shall authorize the *[protectors']* **designated representatives'** access to those *[client]* **individual** records specified by the *[clients]* **individual** and for periods of time specified by the *[clients]* **individual**.

(B) *[Protectors]* **Designated representatives** shall not have the right to approve or refuse *[care, habilitation,]* referral, **support** or placement of *[clients]* **individuals**.

(C) *[Clients]* **Individuals** may revoke their consent ~~verbally or~~ in writing at any time and *[facility staff]* **the division and all parties responsible for the implementation of the ISP** shall recognize the revocations immediately.

(D) Consents and revocations shall be documented in *[clients']* **the individual's** *[records]* **ISP** and *[heads of facilities]* **copies** shall be given *[copies]* to *[protectors]* **designated representatives**.

[(5) If facility staff finds that a parent, guardian or protector is acting contrary to the best interest of a client by preventing or disrupting the client's care or habilitation, the staff shall notify the head of the facility of their findings. If the head of the facility concurs with the findings, s/he shall provide written notification of the findings to the parent, guardian or protector.

(A) If the client is a minor, the head of the facility may consult with juvenile court about the findings and then take appropriate action as authorized by law.

(B) In the case of a legal guardian, the head of the facility shall consult about the matter with department attorneys and the probate division judge supervising the guardian and, if indicated, take appropriate action through the court.

(C) In the case of a protector, the head of the facility shall allow the protector to present an appeal in person or in writing regarding the findings. If the head of the facility continues to concur with the findings, the protector may further appeal the notice of nonrecognition to the division director, who shall review the decision of the head of the facility and suspend, modify,

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affirm or reverse the action of the head of the facility. The division director shall notify the head of the facility and the protector in writing of the decision. The decision of the division director shall be final.]

AUTHORITY: section 630.050, RSMo (1994). This rule was previously filed as 9 CSR 50-1.055. Original rule filed March 4, 1992, effective Aug. 6, 1992. Amended: Filed May 25, 1995, effective Dec. 30, 1995.*

**Original authority 1980, amended 1993.*

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